

FRANK C. LYTLE III

IBLA 82-1206, 82-1211

Decided December 16, 1982

Appeal from decisions of Montana State Office, Bureau of Land Management, rejecting first-drawn applications for oil and gas leases. M 53744 and M 53780.

Affirmed.

1. Administrative Procedure: Generally -- Notice: Generally -- Rules of Practice: Generally

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

2. Administrative Procedure: Generally -- Rules of Practice: Generally

Although the Postal Service is the agent of BLM to deliver written communications to the address of record of an applicant, where the applicant changes his address giving notice only to the Postal Service and not to BLM, the Postal Service then becomes the agent for the applicant who must bear the responsibility and consequence for failure of the Postal Service to properly deliver mail from BLM to the changed address, where the mail was originally properly dispatched to the address of record of the applicant.

APPEARANCES: Frank C. Lytle III, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank C. Lytle III appeals the July 23, 1982, decisions of the Montana State Office, Bureau of Land Management (BLM), which rejected his simultaneous oil and gas lease applications M 53744 and M 53780, drawn with first priority for parcels MT 9 and MT 45, respectively, in the November 1981 drawing. The applications were rejected for failure to file a lease offer and submit the first year's rental as required by 43 CFR 3112.4-1(a), within the time allowed.

The notices requiring payment and lease documents for signature were sent by certified mail May 3, 1982, for MT 53744, and May 6, 1982, for MT 53780, each to the address of record, 12807 Hunterfield, Cypress, Texas 77429, as shown on the applications. The Postal Service attempted delivery of the first envelope May 7 and 18, thereafter returning the envelope to BLM June 1, marked "unclaimed." Delivery of the second envelope was attempted May 10 and 20, and that envelope was returned to BLM May 28, also marked "unclaimed."

The applicable regulation, 43 CFR 1810.2(b), provides:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

Upon receipt of the envelopes endorsed "unclaimed" by the Postal Service, BLM commenced the 30-day period allowed by 43 CFR 3112.4-1(a) for submission of the first year's rental and signature of the lease documents. As no response was received within the required time, BLM issued the rejection decisions of July 23, 1982.

Appellant states only that although he had requested the Postal Service to forward his mail from 12807 Hunterfield, Cypress, Texas 77429, to 1500 Cashco Tower, 8 Greenwood Plaza, Houston, Texas 77046, the Postal Service did not forward the certified envelopes containing the oil and gas lease documents, and he thinks he should now be given a second opportunity to pay the rentals and receive the leases.

[1] Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document. Betty Alexander, 53 IBLA 139 (1981); Lite Sabin, 51 IBLA 226, 87 I.D. 610 (1980).

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with first priority at a simultaneous drawing when he fails to pay the first year's rental within 30 days (or on the first business day thereafter) of receipt of the notice that such payment is due. See Jack Koegel, 30 IBLA 143 (1977).

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of asserted delay by the Postal Service. Koegel, *supra*.

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of notice that payment was due, disqualification of the offer is automatic. Paul H. Landis, 61 IBLA 244 (1982); Keith B. Livermore, 59 IBLA 232 (1981); Arthur Ancowitz, 58 IBLA 112 (1981).

To grant the first drawn applicant additional time beyond that prescribed by the regulations for payment of the first year's rental would impinge upon the rights of the second and third drawn applicants. Cf. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

[2] Although the Postal Service is the agent of BLM to deliver written communications to the address of record of an applicant, where the applicant changes his address giving notice only to the Postal Service and not to BLM, the Postal Service then becomes the agent of the applicant who must bear the responsibility and consequence for failure of the Postal Service to properly deliver mail from BLM to the changed address, where the mail was originally properly dispatched to the address of record of the applicant. Cf. Regina McMahon, 56 IBLA 372 (1981); Don Chris A. Coyne, 52 IBLA 1 (1981).

Appellant has submitted no documentation to buttress his statement that he had requested the Postal Service to forward his mail from his address of record at the time the notices were transmitted by BLM. Indeed, the several attempts by the Postal Service to deliver the certified envelopes to the address of record strongly supports the belief that the Postal Service did not have such a request. The petition of appellant to have his applications reinstated must be denied.

We point out that this situation could have been avoided if appellant had notified BLM of his change of address. See 43 CFR 1810.2(a); cf. 43 CFR 4.22(d).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge